No. 72727-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JESSE MEJIA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

On a former dairy farm, Jesse Mejia lived in a trailer by a barn. Without a warrant or consent of the owner of the property, police entered the property and found stolen vehicles inside and outside of the barn. After trespassing, police obtained a warrant and searched the barn and trailer. Charged with possessing stolen vehicles, Mr. Mejia moved to suppress the evidence obtained from the unlawful searches, but was deemed to lack "standing." Because Mr. Mejia had standing to challenge the searches, this Court should reverse. Additionally, his convictions for possessing stolen vehicles should be reversed because the State failed to prove that Mr. Mejia "disposed of" these vehicles. Reversal is also justified because the court improperly excluded two of Mr. Mejia's witnesses. Alternatively, the case should be remanded for resentencing because the State failed to prove Mr. Mejia's criminal history.

B. ASSIGNMENTS OF ERROR

1. In violation of article one, section seven of the Washington Constitution and the Fourth Amendment to the United States Constitution, the trial court erred in denying Mr. Mejia's motion to suppress evidence.

2. In violation of Mr. Mejia's right to a unanimous verdict and the law of the case doctrine, the jury was not instructed that it had to be unanimous on the alternative means of committing possession of a stolen

vehicle and sufficient evidence did not support each means.

3. In violation of Mr. Mejia's constitutional right to call witnesses under article one, section twenty-two of the Washington Constitution and the Sixth Amendment to the United States Constitution, the trial court improperly excluded two of Mr. Mejia's witnesses.

4. In violation of constitutional due process, the State failed to prove Mr. Mejia's criminal history.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. In Washington, a person has "automatic" standing to contest a search if the person is charged with a possessory offense and is in possession of the evidence at the time of the search. The State alleged that Mr. Mejia possessed stolen vehicles on or about November 12, 2013, the same date that police trespassed on the property around the barn. The State theorized that Mr. Mejia was living in a trailer adjacent to the barn. Did the trial court err in concluding that Mr. Mejia lacked standing?

2. After their unlawful entry, police discovered a stolen vehicle outside the barn and saw another stolen vehicle inside the barn. Police then obtained a warrant to search the property, barn, and trailer. The affidavit offered in support of the warrant relied on information from the unlawful trespass onto the property. Given the lack of a sufficient

independent source that would save the warrant, is the warrant not supported by probable cause?

3. Assuming Mr. Mejia lacked standing to challenge the search of the property and barn, he still had standing to contest the search of the trailer. Other than its mere proximity, nothing linked the trailer to the stolen vehicles. While police had reason to believe Mr. Mejia was living in the trailer, no information in the affidavit asserted he was involved with the stolen vehicles. Given the lack of probable cause to search the trailer for evidence related to possessing stolen vehicles, did the trial court err in determining that the trailer was searched under the authority of a valid warrant?

4. In each of the four "to-convict" instructions, the State was required to prove that Mr. Mejia "knowingly received, retained, possessed, concealed, and/or disposed of a stolen motor vehicle." When in a "to-convict" instruction, these five various ways of committing the offense must be supported by sufficient evidence in order to uphold the verdict. There was no evidence that Mr. Mejia "disposed of" any of the four vehicles, i.e., that he transferred control of them to another person. Should all four convictions be reversed?

5. Defendants have a constitutional right to call witnesses and exclusion of evidence is an extraordinary remedy. After surprising

testimony from the renter of the house on the property in the State's case-in-chief, counsel for Mr. Mejia informed the State he would be calling additional witnesses to impeach the renter. The next morning, the prosecutor moved to exclude two of the witnesses because he had been unable to personally interview them. Rather than continue the case briefly, the court granted the motion because these witnesses were not on Mr. Mejia's witness list and the court did not want to delay the trial. Did the trial court abuse its discretion in excluding two witnesses who would have impeached a key witness for the State?

6. The State bears the burden to prove a defendant's criminal history. A prosecutor's mere summary of a defendant's criminal history is inadequate to meet this burden even if the defendant does not object. The court accepted the prosecutor's understanding of Mr. Mejia's criminal history without any independent evidence or stipulation by Mr. Mejia. Did the State fail to prove Mr. Mejia's criminal history, requiring remand for a new sentencing hearing?

D. STATEMENT OF THE CASE

Norma and Douglas Rex own real estate near Highway 20, specifically 17108 SR, Burlington, WA. 10/28/14RP 20, 59-60.[1] The

[1] There are multiple volumes of the report of proceedings. The RPs are cited according to their date.

property used to be a dairy farm. 10/28/14RP 34. There is a house and large barn on the property. 10/28/14RP 25, 28; Ex. 1, 8. The barn is on the east side of the property while the house is on the west side. 10/28/14RP 110; CP 62-64. A driveway divides the house and the barn. CP 62-64. The Rexes rent the house to William Everett, who has lived there for about 20 years. 10/28/14RP 22, 37, 59-60. They rent the land to another person who plants crops. 10/28/14RP22. No one is supposed to use the barn. 10/28/14RP 24.

Though Mr. Everett only rented the house, he would let other people live on the property. 10/28/14RP 40, 60. The Rexes often complained to him that he was supposed to be the only person there. 10/28/14RP 39. Mr. Everett also acquired and kept many old vehicles on the property. 10/28/14RP 37, 60-66; Ex 13-18. The Rexes repeatedly asked him to get rid of them. 10/28/14RP 22, 31.

Mr. Everett testified that he told Jesse Mejia he could stay on the property for three or four months because Mr. Mejia had no place to go. 10/28/14RP 67-68. He testified that Mr. Mejia stayed in a trailer, which was by the east side of the barn, with Eva Ruiz, Mr. Mejia's girlfriend. 10/28/14RP 68-69; Ex. 12. The trailer got electricity from the house. 10/28/14RP 73. Though Mr. Everett did not rent the barn, he said he gave

Mr. Mejia permission to go into the barn, but "didn't want anything there." 10/28/14RP 69.

On November 12, 2013, Deputy Jason Moses of the Skagit County Sheriff's Office conducted an investigation into a possible "chop shop" at the property. 10/28/14RP 108. Deputy Moses testified that he began his investigation around 11:20 p.m. after receiving a tip from a man named Tyler Paradis, who was in police custody on an eluding charge. 10/28/14RP 115-17. Deputy Moses went to the property that night with Deputy Wade Wilhonen. 10/28/14RP 41, 109. The deputies found a red Acura that was partly dismantled on the east end by the barn. 10/28/14RP 44. After relaying the VIN (vehicle identification number), dispatch told the deputies that the car was reported stolen. 10/28/14RP 44. The deputies then peeked through openings into the barn and saw other vehicles inside. 10/28/14RP 44, 111. After relaying the license plate number on a van inside, dispatch said the van was reported stolen. 10/28/14RP 45.

The deputies saw the trailer by the barn. 10/28/14RP 111. A dog was secured near the trailer. 10/28/14RP 111. No one answered when they knocked on the door of the trailer. 10/28/14RP 112. The door was secured with a padlock on the outside. 10/28/14RP 112. Deputy Moses

testified that, before this night, Mr. Mejia had told him that he was living in a trailer at Mr. Everett's place. 10/28/14RP 114.

The Deputies secured the scene for the dayshift. 10/28/14RP 51, 113. Detective Kay Walker obtained a search warrant for the premises, which included the house, barn, and trailer. CP 60-61; 10/28/14RP 86. Inside the barn were two more vehicles that were identified as stolen. 10/28/14RP 87, 100-01, 111. Inside the trailer, police found items and documents with Mr. Mejia's name, Ms. Ruiz's name, and Mr. Everett's name. 10/28/14RP 118, 124, 138-41, 190; 10/29/14RP 49-51, 139-40. There were also some items which belonged to the owner of the van. 10/28/14RP 118, 124; 10/29/14RP 139-40.

Mr. Mejia was arrested on December 3, 2013 at the Mount Vernon Municipal Court. 10/29/14RP 15, 38. The State charged Mr. Mejia with four counts of possession of a stolen vehicle and one count of identity theft in the second degree. CP 7-8. The identify theft charge was premised on Mr. Mejia possessing documents belonging to Mr. Everett, but the charge was later dismissed for insufficient evidence. 10/29/14RP 28-29.

Mr. Mejia moved to suppress the evidence obtained as a result of the police searching the property. CP 54-64, 71. The court denied his motion. CP 9-10.

At trial, Ms. Rex, Mr. Everett, and law enforcement witnesses testified about the foregoing substantive facts. 10/28/14RP 20-194; 10/29/14RP 15-17. Mr. Mejia sought to call three witnesses, but the trial court excluded two of his witnesses on the basis they were not disclosed soon enough and the prosecutor had not interviewed these two witnesses. 10/29/14 RP 12-13. The court refused to delay the trial to let interviews happen and refused Mr. Mejia's request to submit an offer of proof on what these witnesses would testify to. 10/29/14 RP 13. Mr. Mejia was allowed to call Ms. Ruiz, who was Mr. Mejia's former girlfriend and mother of two of his children, as a witness. 10/29/14 RP 13, 35.

Ms. Ruiz testified that she knew Mr. Everett through Mr. Mejia. 10/29/14RP 30. She had resided on the property in the trailer. 10/29/14RP 31. She used the house that Mr. Everett rented. 10/29/14RP 31. She could not recall the exact period she had lived there. 10/29/14RP 31. For part of the time she lived there, Mr. Mejia lived with her. 10/29/14RP 35. After moving to her sister-in-law's residence sometime before November 2013, she returned to take care of the dog at the property. 10/29/14RP 33.

Mr. Mejia testified that he had lived in the trailer. 10/29/14RP 47. He left, however, around May or June 2013 and moved to North Dakota. 10/29/14RP 51. He used the trailer for storage. 10/29/14RP 43. He

returned to Washington in November 2013 to see Ms. Ruiz, who was pregnant. 10/29/14RP 33, 42, 58. He did not live in the trailer when he returned. 10/29/14RP 43-45, 60. Mr. Mejia denied being involved with the vehicles in the barn. 10/29/14RP 54.

The jury convicted Mr. Mejia on the four counts of possession of a stolen vehicle. 10/30/14RP 135. At sentencing, the State calculated Mr. Mejia's offender score as 15. 11/13/14RP 137. The State did not submit any certified documents to prove Mr. Mejia's offender score and only submitted a statement of the prosecutor's understanding of Mr. Mejia's criminal history. CP 75. Based on the offender score, the Court sentenced Mr. Mejia to 50 months of confinement. 11/13/14RP 139; CP 42.

E. ARGUMENT

1. By trespassing on the premises, the deputies conducted an unlawful search, requiring suppression of all the evidentiary fruits. Regardless, there was not probable cause to search the trailer on the premises.

a. The court incorrectly concluded that Mr. Mejia lacked "standing" to bring his motion to suppress.

Mr. Mejia filed a motion to suppress, arguing that there was not probable cause to issue the search warrant for the premises. CP 54-64, 71. His primary argument was that the police violated article one, section seven of the Washington Constitution by entering onto the premises without the consent of the owner of the property and that this tainted the

officers' discovery of stolen vehicles inside and outside the barn. CP 54, 71. The motion was based on accompanying pleadings and affidavits, and the records in the case. CP 71. The State contended that Mr. Mejia lacked standing to bring his challenge, that the officers had consent to conduct the search, and that Mr. Mejia was not entitled to an evidentiary hearing on his motion. CP 78-80, 87-90. Without conducting an evidentiary hearing, the trial court took the matter under advisement. 8/20/14 RP 31-32.

After reviewing the affidavit in support of the search warrant,[2] and the written arguments and documents submitted, the trial court issued a written ruling denying Mr. Mejia's motion to suppress. CP 9-10. The court reasoned that Mr. Mejia had no standing to challenge the officers' observations on the property and that the search of the trailer was authorized by the search warrant:

> There is no dispute that deputies received permission from William Everett, the renter, before entering the property. Mr. Everett does not rent the barn on the property. Deputies made observations of vehicles outside the barn and also stood outside the barn and looked through holes in the walls to observe vehicles inside the barn.
>
> After the above noted observations, the property owner, Douglas Rex, was contacted and he gave a written consent to search the barn. There was no rental agreement with any person for the use of the barn and the attached

[2] Copies of the affidavit and warrant are attached in the appendix.

shed/workshop. Mr. Rex indicated there should be no vehicles in the barn.

Upon discovering numerous stolen vehicles inside and outside the barn, law enforcement obtained a search warrant for the property, barn, attached shed/workshop and a trailer parked outside the barn.

Mr. Everett did not rent the barn, however, there is no indication that he was limited in his access to the land outside the barn. He gave deputies permission to come onto the property. Mr. Rex gave permission to go into his barn and the search warrant gave authority for the search of the trailer.

Deputies were lawfully on the property when they looked through holes in the barn and made plain view observations. Those observations did not taint the subsequent permissive search or search warrant that followed.

The defendant has no standing to challenge the plain view observations or permissive search of the barn. He was a trespasser on the property. He may have standing to object to the search of the trailer as a separate private dwelling. That objection fails because the trailer was searched by authority of a valid search warrant.

CP 9-10.

b. Mr. Mejia had automatic standing to challenge the officers' search of the barn and the area surrounding it.

The state and federal constitutions protect against unlawful searches and seizures. Const. art. I, § 7; U.S. Const. amend. IV.[3] A

[3] "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, § 7.

person may challenge a search under article one, section seven, if the person has a legitimate privacy interest. State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984). Even where the person does not, a person still has "standing" to challenge a search if the requirements of the "automatic standing" doctrine are met. State v. Simpson, 95 Wn.2d 170, 181, 622 P.2d 1199 (1980). The automatic standing doctrine originated to address the "self-incrimination" dilemma. State v. Jones, 146 Wn.2d 328, 334, 45 P.3d 1062 (2002). Absent automatic standing, defendants may be deterred from asserting possession of the evidence because of the risk that statements made at a suppression hearing will be used against them later as impeachment evidence. Id. The doctrine, though dead under a Fourth Amendment analysis, remains alive under article one, section seven. State v. Evans, 159 Wn.2d 402, 407, 150 P.3d 105 (2007).

A defendant has "automatic standing" if (1) the charged offense involves possession as an essential element; and (2) the defendant was in possession of the subject matter at the time of the contested search or seizure. Jones, 146 Wn.2d at 332; Simpson, 95 Wn.2d at 181. Denials of

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"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

ownership do not eliminate standing. State v. Goodman, 42 Wn. App. 331, 335, 711 P.2d 1057 (1985).

Here, the first requirement is met because possession is an essential element of the offense of possession of a stolen vehicle. RCW 9A.56.068(1); State v. Zakel, 119 Wn.2d 563, 569, 834 P.2d 1046 (1992) (possession is an essential element of the offense of possession of stolen property).

The second requirement is also met because Mr. Mejia was allegedly in possession of the vehicles at the time of the search. As recounted in the affidavit submitted in support of finding probable cause, Mr. Mejia was "contacted by law enforcement on November 5, 2013 and Mr. Mejia had provided his residence address as 17108 SR, Burlington, Washington." CP 59. This affidavit also states that Mr. Everett, the renter of the house on the premises, said he had seen Mr. Mejia coming and going from the property. CP 59. Further, the affidavit offered in support of the arrest warrant for Mr. Mejia, which was part of the court record, stated that Mr. Everett said Mr. Mejia was living in the trailer next to the barn. CP 2-3.

This Court's decision on automatic standing in Bobic is analogous. There, the defendant was charged with possessing stolen property, which was seized in a storage unit rented to a third person. State v. Bobic, 94

Wn. App. 702, 707, 972 P.2d 955 (1999) (vacated on other grounds, 140 Wn.2d 250, 996 P.2d 610 (2000)). This Court held the trial court had erred in holding that the defendant did not have automatic standing, but upheld the denial of the defendant's motion to suppress on the alternative ground that the officers legitimately saw the evidence in open view. Id. at 713. Our Supreme Court affirmed the denial of the motion to suppress on this alternative ground. State v. Bobic, 140 Wn.2d 250, 258-59, 996 P.2d 610 (2000). The court, however, did not address the automatic standing issue because the State had not filed a cross-petition for review on that issue. Id. at 258.

Similar to Bobic, Mr. Mejia had vehicles in and immediately outside of a structure on property owned by a third party, Mr. Rex. He resided in a trailer on this property adjacent to the barn. These facts make this case distinct from Zakel, a case where the defendant did not meet the second requirement for automatic standing. Zakel, 119 Wn.2d at 569-70. There, the stolen vehicle was not only unattended, but it was illegally parked in a commercial alley, and the defendant did not live or stay with anyone at the nearby apartment building. Id. at 570. In contrast, here the vehicles were on private property and the defendant lived nearby in a trailer.

In arguing that Mr. Mejia lacked standing below, the State relied on Williams. There, drugs were found on the defendant's person incident to the defendant's arrest on a valid arrest warrant in another person's apartment. State v. Williams, 142 Wn.2d 17, 23, 11 P.3d 714 (2000). The Court rejected the argument that automatic standing allowed the defendant to argue that the drugs should be suppressed because the entry into the residence was unlawful. The Court reasoned that it could not "agree that the automatic standing rule as originally conceived by the Supreme Court would have any application where there is no conflict in the exercise of his Fourth and Fifth Amendment rights." Id.

As explained in a later case, the defendant in Williams "was not placed in the position of having to claim ownership of contraband or admit to any criminal conduct to challenge the search of his person. Indeed, his possession of contraband was wholly unrelated to whether police lawfully entered a third party's apartment." Jones, 146 Wn.2d at 334. Thus, in Jones, the Court distinguished Williams and held that the defendant had automatic standing to challenge the search of his passenger's purse after being stopped for a traffic violation and arrested. Id. at 331, 335. The second requirement was met because the defendant exercised control over the car and its contents, and the defendant faced the self-incrimination dilemma that underpins the doctrine. Id. at 333. Unlike Williams, there

was a direct relationship between the challenged police action and the evidence. Id. at 334.

These cases establish that the trial court erred in concluding that Mr. Mejia lacked standing to challenge the search and seizures. This Court should hold that Mr. Mejia met the requirements for automatic standing.

c. By trespassing on private property without the consent of the owner, police intruded on private affairs in violation of article one, section seven of the Washington Constitution.

As argued below, the affidavit establishes that police did not have authority from Mr. Rex, the owner of the barn and the land around it, when they entered the property and made their initial observations. They were trespassers. See State v. Ross, 141 Wn.2d 304, 314, 4 P.3d 130 (2000) (plurality opinion) (police not lawfully on property at 12:10 a.m., "an hour when no reasonably respectful citizen would be welcome absent actual invitation or an emergency.").[4] This taints the discovery of the vehicles in and around the barn.

That police had the consent of the renter of the house, Mr. Everett, did not provide police with authority of law to enter other protected

[4] Two justices concurred in Ross on broader grounds than the cited plurality opinion. Ross, 141 Wn.2d at 319 (Talmadge, J., concurring) ("If the police enter property to search for evidence of a crime without a warrant, the fruits of any such search should be inadmissible.").

portions of the property. The affidavit does not assert that Mr. Everett rented the barn or the property around it. CP 58. It only recounted that he rented the house. CP 58. Since he did not have authority to grant consent, his consent did not validate the presumptively invalid warrantless search. State v. Eisfeldt, 163 Wn.2d 628, 639, 185 P.3d 580 (2008) (repairman did not have authority to let police into defendant's home). The trial court erred by concluding otherwise. Further, any reasonable belief by the officers that Mr. Everett had authority is irrelevant. Id.

The State may argue that this violation is inconsequential because police later obtained the permission of Mr. Rex to search the barn and the area around it. At this point it was too late. This is an "inevitable discovery" argument, and Washington has rejected the inevitable discovery doctrine as inconsistent with article one, section seven of the Washington Constitution. State v. Winterstein, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009).

The discovery of the stolen vehicles was fruit of the poisonous tree and must be suppressed. State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999). The question becomes whether there was independent information in the warrant, free of the taint, which still supports the probable cause determination. State v. Coates, 107 Wn.2d 882, 888-89, 735 P.2d (1987) (after excluding illegally obtained statement from

defendant, remaining information in warrant affidavit independently established probable cause for search warrant). Here, without the officer's observations of the stolen vehicles, probable cause would have not existed to obtain the search warrant. See Ross, 141 Wn.2d at 315 (observation of mold and mildew on window of garage, combined with anonymous tip about possible marijuana growing operation, did not establish probable cause for warrant to search defendant's house and garage for marijuana); State v. Johnson, 75 Wn. App. 692, 710, 879 P.2d 984 (1994) (insufficient untainted evidence to support issuance of the warrant). Accordingly, the trial court erred in denying Mr. Mejia's motion to suppress. This Court should reverse.

d. Alternatively, probable cause did not justify the search of Mr. Mejia's trailer. The seized evidence was prejudicial.

The trial court correctly recognized that Mr. Mejia "may have standing to object to the search of the trailer as a separate private dwelling." CP 10. The court, however, incorrectly ruled "[t]hat objection fails because the trailer was searched by authority of a valid search warrant." The warrant did not establish probable cause to search the trailer. Because the evidence obtained from the search of the trailer should have been suppressed and this evidence was prejudicial as to all of Mr. Mejia's convictions, this Court should reverse.

"A search warrant may issue only upon a determination of probable cause." State v. Thein, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). Review of whether the search warrant was properly issued is limited to the four corners of the affidavit offered to establish probable cause. State v. Neth, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). The trial court's determination of probable cause is a legal conclusion reviewed de novo. Id.

"Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." Thein, 138 Wn.2d at 140. "Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a reasonable nexus is not established as a matter of law." Id. at 147. An "affidavit in support of a search warrant must be based on more than mere suspicion or personal belief that evidence of a crime will be found on the premises searched." Neth, 165 Wn.2d at 183. "[C]riminal activity alone does not create probable cause to search a defendant's residence." State v. Espey, 184 Wn. App. 360, 371, 336 P.3d 1178 (2014). Alone, broad generalizations do not establish probable cause. Thein, 138 Wn.2d at 148-49.

The search warrant authorized police to search the property, house, barn, and the trailer ("white Holiday Rambler"). CP 60. The warrant authorized police to seize stolen motor vehicles, motor vehicle parts and accessories, and items of dominion and control. CP 60.

The trial court's conclusion that there was probable cause to search the trailer for evidence related to the crime of possession of a stolen motor vehicle was erroneous. Obviously there were not whole motor vehicles inside the trailer. As for motor vehicle parts and accessories, other than its mere proximity to the stolen vehicles, there was no showing that the trailer or Mr. Mejia were connected to the stolen vehicles. The affidavit of probable cause only stated that there was "an electrical cord running from the inside of the barn to a trailer with a blue tarp over the roof parked outside of the barn." CP 59. The affiant did not claim that it would be common for people to store motor vehicle parts in their residence. CP 58-60. Finding stolen property on a parcel of property does not license police to go on fishing expeditions inside residences on that corresponding parcel of property. State v. Kelley, 52 Wn. App. 581, 586, 762 P.2d 20 (1988) (probable cause to search outbuildings for marijuana did not establish probable cause to search residence); State v. Nordlund, 113 Wn. App. 171, 183, 53 P.3d 520 (2002) (no nexus between alleged crimes and defendant's use of computer; "State was fishing for some incriminating

document"). Moreover, probable cause to search an outbuilding or residence on a parcel of property does establish probable cause to search other structures when they are occupied by other people. State v. Gebaroff, 87 Wn. App. 11, 17, 939 P.2d 706 (1997) ("if probable cause had existed for a search of the main residence, it did not exist for the search of [defendant's] separately occupied trailer.").

The affidavit also did not connect Mr. Mejia to evidence of stolen vehicles. The affidavit only asserted that Mr. Mejia had earlier told an officer he was living at the address where the stolen vehicles were later found. While the affidavit recounted that Mr. Mejia had a criminal history, including convictions for possession of stolen property and taking a motor vehicle without permission, this did not establish probable cause to search his residence. CP 59. "A history of the same or similar crimes may be helpful in determining probable cause, but without other evidence, it also falls short of probable cause to search." Neth, 165 Wn.2d at 185-86.

Accordingly, the items from the trailer should have been suppressed. Among other things, this included items belonging to Angela Barnes, the owner of the stolen van. 10/28/14RP 118, 124; 10/29/14RP 139-40. It also included items belonging to Mr. Mejia, Mr. Mejia's former

girlfriend–Eva Ruiz, and Mr. Everett. 10/28/14RP 138-141, 190; 10/29/14RP 49-51.

The error was prejudicial. Constitutional error may be considered harmless if the appellate court is convinced beyond a reasonable doubt that any reasonable trier of fact would have reached the same result despite the error. State v. Thompson, 151 Wn.2d 793, 808, 92 P.3d 228 (2004). Here, the evidence from the trailer was used to tie Mr. Mejia to the stolen vehicles and to argue that he was residing in the trailer. The prosecutor cited this evidence during closing to support its theory that Mr. Mejia possessed the vehicles "on or about" November 12, 2013. 10/30/14RP 109-10; CP 24-27. It undercut Mr. Mejia's defense that he had only been at the property on and off and did not possess the vehicles. See 10/30/14RP 117-19. The convictions should be reversed.

2. The evidence was insufficient to prove that Mr. Mejia "disposed of" the stolen vehicles.

a. Defendants have a constitutional right to a unanimous jury verdict and the law of the case doctrine requires the State to prove any unnecessary requirements in a "to-convict" instruction.

Criminal defendants in Washington have a right to a unanimous jury verdict. Const. art. 1, § 21; State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). If the evidence is insufficient to prove whether the defendant committed the offense by any one of the means submitted to

the jury, the conviction must be reversed. Ortega-Martinez, 124 Wn.2d 702, 708, 881 P.2d 231 (1994). Under the law of the case doctrine, the State assumes the burden of proving any unnecessary requirements that find their way into the jury instructions. State v. Hickman, 135 Wn.2d 97, 101-02, 954 P.2d 900 (1998).

b. Alternative means listed in a "to-convict" instruction for possession of a stolen vehicle charge must be supported by sufficient evidence. Otherwise the conviction must be reversed on appeal.

To be guilty of possession of a stolen vehicle, one must "possess." the vehicle. RCW 9A.56.068(1) ("A person is guilty of possession of a stolen vehicle if he or she possess [possesses] a stolen motor vehicle."). This offense implicitly incorporates the terms applicable to the offense of possession of stolen property. State v. Satterthwaite, 186 Wn. App. 359, 364, 344 P.3d 738 (2015). "'Possessing stolen property' means knowingly to receive, retain, possess, conceal, or dispose of stolen property knowing that it has been stolen and to withhold or appropriate the same to the use of any person other than the true owner or person entitled thereto." RCW 9A.56.140(1). Though these terms are not defined, the terms must be read distinctly because the Legislature does not include superfluous words in statutes. State v. Roggenkamp, 153 Wn.2d 614, 624, 106 P.3d 196 (2005) ("statutes must be interpreted and construed so that

all the language used is given effect, with no portion rendered meaningless or superfluous.") (internal citations omitted).

This Court has indicated this definitional statute does not create alternative means. State v. Hayes, 164 Wn. App. 459, 477, 262 P.3d 538 (2011). Nevertheless, under the law of the case doctrine, if more than one of these alternative definitions of "possession" are placed in a "to-convict" instruction, there must be sufficient evidence to support each alternative in order to uphold the verdict. State v. Lillard, 122 Wn. App. 422, 434-35, 93 P.3d 969 (2004) (so holding, but determining there was sufficient evidence that the defendant received, retained, possessed, concealed, and disposed of stolen property); Hayes, 164 Wn. App. at 480-81 (applying Lillard where "to-convict" instructions for possession of a stolen vehicle included all five alternative definitions and reversing for lack of proof defendant concealed or disposed of vehicles).

c. The State assumed the additional burden of proving that Mr. Mejia "disposed of" the vehicles. The evidence did not prove that Mr. Mejia "disposed of" the four vehicles, requiring reversal.

All four "to-convict" instructions on the possession of stolen vehicle counts required the State to prove, "[t]hat on or about November 12, 2013 the defendant knowingly received, retained, possessed,

concealed, and/or disposed of a stolen motor vehicle." CP 24-27.[5] These "to-convict" instructions are materially indistinguishable from the "to-convict" instructions in Lillard and Hayes. Compare CP 24-27 with Lillard, 122 Wn. App. at 434 n.25; Hayes, 164 Wn. App. at 480. Accordingly, the State assumed an additional burden and there must be sufficient evidence to support each alternative means on each count. Hayes, 164 Wn. App. at 480-81.

Evidence is sufficient to support a determination of guilt only if a rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt. Jackson v.

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[5] The to-convict instruction on the first count read:

> (1) That on or about November 12, 2013 the defendant knowingly received, retained, possessed, concealed, and/or disposed of a stolen motor vehicle; to wit: a 1992 Honda Accord, Washington License NO. AFM8003;
>
> (2) That the defendant acted with knowledge that the motor vehicle had been stolen;
>
> (3) That the defendant withheld or appropriated the motor vehicle to the use of someone other than the true owner or person entitled thereto;
>
> (4) That any of these acts occurred in the State of Washington.

CP 24. The other three "to-convict instructions" were identical except as to the identified vehicle. CP 25 ("a 1990 Honda Accord, Washington License No. 287WFO"); CP 26 ("a blue G.M.C. Safari, Washington License No. 770XJU"); CP 27 ("a red Acura Integra, Washington License No. AFM8261").

Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). Only reasonable inferences are drawn in favor of the State. Jackson, 443 U.S. at 319. "[I]nferences based on circumstantial evidence must be reasonable and cannot be based on speculation." State v. Vasquez, 178 Wn.2d 1, 16, 309 P.3d 318 (2013).

There was insufficient evidence that Mr. Mejia disposed of these four vehicles. To "dispose of" means:

> to transfer into new hands or to the control of someone else (as by selling or bargaining away): relinquish, bestow . . . to get rid of: throw away: discard . . . to treat or handle (something) with the result of finishing or finishing with . . .

Webster's Third International Dictionary, 654 (1993).

In Hayes, this Court applied this meaning. Hayes, 164 Wn. App. at 481 ("The parties agree that 'dispose of' means to transfer into new hands or to the control of someone else."). Applying this meaning, the Court reversed a conviction for possession of a stolen vehicle because there was "no evidence to show that someone other than [the defendant] himself drove the [stolen vehicle] to Puyallup or that he transferred control of it to another person." Id. at 481. As in Hayes, there is no evidence that Mr. Mejia transferred control of the vehicles to someone else. Cf. Lillard,

122 Wn. App. at 435 (sufficient evidence that defendant "disposed of" stolen property where stolen merchandise was returned to store).

There was also insufficient evidence that Mr. Mejia "concealed" the 1992 Honda Accord, Washington License No. AFM8003, which was the vehicle for count one. "Conceal" means:

> to prevent disclosure or recognition of: avoid revelation of: refrain from revealing: withhold knowledge of: draw attention from: treat so as to be unnoticed . . . to place out of sight: withdraw from being observed . . . .

Webster's Third International Dictionary, 469 (1993). There was no evidence that Mr. Mejia concealed this vehicle. Cf. Lillard, 122 Wn. App. at 435 (substantial evidence that defendant "concealed" stolen property where property was in back of padlocked "U-Haul" truck). It was discovered outside of the barn in the open. This conviction should be reversed.

In sum, all four convictions should be reversed because there was insufficient evidence that Mr. Mejia "disposed of" the four vehicles. Hayes, 164 Wn. App. at 481. The conviction premised on the 1992 Honda Accord should be reversed for the additional reason that there was insufficient evidence that Mr. Mejia "concealed" it.

3. Violating Mr. Mejia's constitutional rights, the trial court excluded two of Mr. Mejia's witnesses.

a. Defendants have a constitutional right to call witnesses.

"Few rights are more fundamental than that of an accused to present witnesses in his own defense." Taylor v. Illinois, 484 U.S. 400, 408, 108 S. Ct. 646, 98 L. Ed. 2d 798 (1988). A defendant has a right, under both the state and federal constitutions, to present witnesses on his own behalf. State v. Franklin, 180 Wn.2d 371, 382, 325 P.3d 159 (2014). Specifically, the Sixth Amendment to the United States Constitution[6] and article one, section twenty-two of the Washington Constitution[7] provide

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[6] The Sixth Amendment reads:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. amend. VI.

[7] Article one, section twenty-two reads:

> In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the

this right. Taylor, 484 U.S. at 407-09 (interpreting the Sixth Amendment); State v. Sickles, 144 Wash. 236, 240, 257 P. 385 (1927) (interpreting article one, section twenty-two). Given this constitutional background, exclusion of defense evidence is an extraordinary remedy that should be applied only in narrowest of circumstances. State v. Hutchinson, 135 Wn.2d 863, 882, 959 P.2d 1061 (1998). The appellate court reviews for an abuse of discretion. Id. Four factors are considered in evaluating whether the exclusion of a witness is a justified sanction:

> (1) the effectiveness of less severe sanctions; (2) the impact of witness preclusion on the evidence at trial and the outcome of the case; (3) the extent to which the prosecution will be surprised or prejudiced by the witness's testimony; and (4) whether the violation was willful or in bad faith.

Id. at 882-83. When a party fails to timely identify witnesses, the ordinary remedy for this violation is not exclusion of the witness, but a continuance to give the opposing party time to interview the witness. Id. at 881.

b. Refusing to continue the case to allow for interviews, the trial court excluded two of Mr. Mejia's witnesses.

Around noon on the first day of testimony, shortly after Mr. Everett testified, the prosecutor informed the court during a break that the

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> offense is charged to have been committed and the right to appeal in all cases.
>
> Const. art. I, § 22.

defense had provided the State a witness list with the names Adriana Partida, Cruz Mejia, and Eva Ruiz. 10/28/14RP 105-06.

Ms. Partida was also known by the name of Teresa Simes. 10/29/14RP 32. Mr. Everett had earlier testified that Ms. Partida (Ms. Simes) had not lived with him and accused her of stealing his van. 10/28/14RP 77-78. Counsel was surprised by this answer and wanted to call Ms. Partida to impeach Mr. Everett. 10/28/14RP 81-82; 10/29/14RP 11. Ms. Partida was currently in local custody. 10/28/14RP 105. Counsel stated that he had spoken to Ms. Partida's attorney about the prosecutor talking to her. 10/28/14/RP 107.

Defense counsel represented that Cruz[8] would testify, among other things, that Mr. Everett actually loaned the van to Ms. Partida. 10/28/14RP 106. Counsel provided the prosecutor with Cruz's phone number. 10/28/14RP 106.

The court ruled that the prosecutor should have access to the witnesses by 9:30 a.m. the next morning. 10/28/14RP 107.

The next day, the prosecutor moved to exclude Ms. Partida and Cruz as witnesses. 10/29/14 RP 7, 11. The prosecutor argued reasonable discovery was not provided to the State and that the State had made

[8] To avoid confusion, Cruz Mejia is referred to by his first name.

reasonable efforts to contact these witnesses. 10/29/14 RP 10. The prosecutor represented that he had been unable to interview Ms. Partida because she had refused to talk to him without her attorney present. 10/29/14RP 11. As for Cruz, the prosecutor stated he had been unable to reach him by phone. 10/29/14RP 8. Detective Sigman of the Sheriff's Office, however, was able to speak to Cruz earlier that morning and had taken notes. 10/29/14RP 8. The prosecutor submitted these notes to the court, which have been filed. 10/29/14RP 8; Supp. CP __ (sub. no. 68). In short, the notes recount that Cruz believed Mr. Everett lied during his testimony. Supp. CP __ (sub. no. 68).[9]

Defense counsel responded that Ms. Partida and Cruz were impeachment witnesses, not surprise witnesses. 10/29/14 RP 11. He had no problem with telling his witnesses that they had to speak with law

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[9] The notes state:

10/29/14 0800

Cruz Sarminto Mejia

Yesterday,

Going there because I heard some stuff that is wrong + things will [sic] said that Jesse denies. You will find out when I get there. Bill is a good friend of mine but when it comes to something like that it is not right. Bill lied he did. I know that. I will say what I have to say in court. A lot of things were lies about people I know.

enforcement or the prosecutor. 10/29/14 RP 11. He reiterated that these witnesses would impeach Mr. Everett. 10/29/14 RP.

The court granted the State's request to exclude Ms. Partida's and Cruz's testimony. 10/29/14 RP 13. The court explained that the defense did not timely supply a witness list naming these witnesses. 10/29/14 RP 12. The court further stated that it was not going to delay trial further to allow for interviews. 10/29/14 RP 13. The court refused Mr. Mejia's request to provide an offer of proof as to the two excluded witnesses, remarking that "[e]ven if they were going to come in and testify that they were the ones that actually owned the cars and stole them and chopped them up themselves, I wouldn't, because it's too little, too late." 10/29/14 RP 14.

c. The trial court erred by excluding two of Mr. Mejia's witnesses.

The trial court abused its discretion in excluding the two witnesses. First, there was no discovery violation by the defense. Defendants are required to disclose the names of witnesses they intend to call no later than the omnibus hearing. CrR 4.7(b)(1). However, "[r]ebuttal witnesses need not be listed." State v. Finnegan, 6 Wn. App. 612, 625, 495 P.2d 674 (1972) (citing State v. Stambach, 76 Wn.2d 298, 456 P.2d 362 (1969)). Here, the record shows that defense counsel decided to call these two

witnesses only after hearing Mr. Everett's surprising testimony. As the defense argued, these two witnesses would impeach Mr. Everett. In other words, they were rebuttal witnesses. Mr. Mejia should not be punished for inaccurately predicting Mr. Everett's testimony. See Sickles, 144 Wash. at 240 ("if the defendant did not know that certain witnesses were important to his defense at that time, and learns of them later, he should be entitled to furnish a list of such witnesses and procure compulsory process for their attendance.").

Second, even if there was a discovery violation, the court failed to consider the Hutchinson factors. The mere failure to comply with discovery rules does not authorize the court to suppress the evidence. State v. Ray, 116 Wn.2d 531, 538, 806 P.2d 1220 (1991); State v. Thacker, 94 Wn.2d 276, 280, 616 P.2d 655 (1980). Only extraordinary circumstances, not present in this case, justify exclusion. See Hutchinson, 135 Wn.2d at 881-82 (allowing exclusion of expert witness where the defendant repeatedly refused to submit for an evaluation). Thus, the court abused its discretion by excluding the witnesses based merely on the purported discovery violation.

Third, the Hutchinson factors do not support exclusion. Here, the less severe, ordinary sanction of a short continuance would have sufficed.

See Hutchinson, 135 Wn.2d at 881.[10] As for the impact exclusion had on trial, much of the case turned on the jury's assessment of Mr. Everett's credibility. Mr. Everett claimed he saw the defendant on the property about every night. 10/28/14RP 68. In contrast, Mr. Mejia maintained he had not been living there in November 2013. 10/29/14 RP 45. Further, the court refused to let Mr. Mejia make an offer of proof, making assessment more difficult than it should be. Concerning surprise to the State, it should not be surprising that the defense would want to impeach a key State witness. On the last factor, there was no showing of willfulness or bad faith on the part of the defense. Again, Mr. Mejia wanted to call the witnesses to impeach Mr. Everett's surprising testimony. Thus, the factors show an abuse of discretion. Cf. State v. Venegas, 155 Wn. App. 507, 522-23, 228 P.3d 813 (2010) (where all but the third Hutchinson factors favored the defendant, trial court abused its discretion in excluding defense expert witness; trial court focused too much on fact that testimony created a surprise to the State).

d. The State cannot meet its burden to prove the error harmless beyond a reasonable doubt.

The erroneous exclusion of defense witnesses is constitutional in nature. Franklin, 180 Wn.2d at 382. Constitutional error is presumed to

[10] This is a sanction because the defendant has a right to a speedy trial.

be prejudicial and the State must prove that the error was harmless beyond a reasonable doubt. Id.

The State cannot meet its burden. Mr. Mejia's defense was that he had not been living in the trailer at the time when the State alleged he possessed the stolen vehicles. Mr. Everett's testimony contradicted Mr. Mejia's defense. Impeachment of Mr. Everett could have led the jury to discredit Mr. Everett's testimony and to acquit. This Court should reverse. See Ray, 116 Wn.2d 531 (exclusion of witness not harmless because jury could have found excluded witness credible and acquitted).

4. The State failed to meet its burden to prove Mr. Mejia's criminal history. The Court should remand for a new sentencing hearing.

The State has the burden of proving a defendant's criminal history by a preponderance of the evidence. RCW 9.94A.500(1); State v. Ford, 137 Wn.2d 472, 479-80, 973 P.2d 452 (1999); State v. Mendoza, 165 Wn.2d 913, 928-29, 205 P.3d 113 (2009) (disapproved of on other grounds by State v. Jones, 182 Wn.2d 1, 338 P.3d 278 (2014)). The best evidence of a prior conviction is a certified copy of the judgment. Mendoza, 165 Wn.2d at 920.

"Bare assertions, unsupported by evidence do not satisfy the State's burden to prove the existence of a prior conviction." State v. Hunley, 175 Wn.2d 901, 910, 287 P.3d 584 (2012). A prosecutor's summary is just

that and is thus inadequate to meet this burden. Id. at 913-15; State v. Jones, 182 Wn.2d 1, 10, 338 P.3d 278 (2014). That a defendant does not object at sentencing does not preclude appellate review. Hunley, 175 Wn.2d at 915; Jones, 182 Wn.2d at 10.

Here, the State simply submitted a statement by the prosecutor purporting to recount Mr. Mejia's criminal history. CP 75. The form asserts that Mr. Mejia has six prior adult felony convictions. CP 75. The form submitted by the prosecutor appears to have been intended to be used in cases where the defendant pleads guilty. CP 75. At sentencing, Mr. Mejia did not affirmatively acknowledge that the prosecutor's assertions were correct. He simply did not object and did not make an argument about his offender score. As in other cases, this was inadequate to meet the State's burden. Hunley, 175 Wn.2d at 915. Accordingly, this Court should remand for a new sentencing hearing.

F. CONCLUSION

Because the trial court erred in denying Mr. Mejia's motion to suppress, this Court should reverse Mr. Mejia's convictions for possession of a stolen vehicle. The convictions should be reversed for the additional reasons that the State did not prove that he "disposed of" the stolen vehicles and the court improperly excluded two of his witnesses.

Alternatively, the case should be remanded for resentencing because the State failed to prove Mr. Mejia's criminal history.

DATED this 14th day of August, 2015.

Respectfully submitted,

s/ Richard W. Lechich
Richard W. Lechich – WSBA #43296
Washington Appellate Project
Attorney for Appellant

Appendix

SKAGIT COUNTY DISTRICT COURT – COUNTY OF SKAGIT
STATE OF WASHINGTON

Honorable Linford C. Smith, ~~Judge~~/Commissioner

STATE OF WASHINGTON, PLAINTIFF VS Mejia, Jesse O. DEFENDANT	CAUSE NO. SCW13 - 455 MOTION AND AFFIDAVIT FOR Possession Stolen Property 2nd degree, RCW 9A.56.160 Taking Motor Vehicle Without Permission, RCW 9A.56.070

1. BACKGROUND OF AFFIANT:
See attached affidavit

2. CRIME BEING INVESTIGATED:
Possession Stolen Property 2nd degree, RCW 9A.56.160
Taking Motor Vehicle Without Permission, RCW 9A.56.070

3. CIRCUMSTANCES SUPPORTING PROBABLE CAUSE:
See attached affidavit

WHEREFORE, affiant requests a search warrant to be issued for the purpose of searching:

PREMISES	☒	EVIDENCE OF CRIME	☒
VEHICLE	☒	STOLEN PROPERTY	☒
PERSON	☐	CONTROLLED SUBSTANCES	☐
OTHER	☐		

TO SEIZE:
Stolen vehicles, stolen vehicle parts and accessories; documents of dominion and control.

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Skagit Co. Dist. Court

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SKAGIT COUNTY SHERIFF'S OFFICE
AFFIDAVIT

State of Washington}
County of Skagit}

STATE vs Mejia, Jesse

I, Kay Walker, depose and say I am a commissioned sheriff's detective for the County of Skagit employed since 1995 and assigned to investigations since 2002. I have over 1800 hrs of training, including Basic Law Enforcement Academy, Traffic Enforcement, Accident Investigation, Interview/Interrogation, advanced Crime Scene Investigation, and Evidence Collection to include trace evidence and DNA evidence identification, collection, and preservation, and Homicide Investigation. I am a certified domestic violence trainer and have worked as a Field Training Officer and I am a certified in child interviews. I am responsible for felony level investigations to include the crimes of homicide, assault, robbery, sexual assault, harassment, property crimes, and domestic violence. I have personally conducted and participated in over 200 investigations of violent crimes. I have participated in more than 27 homicide or attempted homicide investigations.

On November 12, 2013 at about 2320 hrs Deputies Moses and Wilhonen responded to 17108 SR 20, Burlington, Skagit County, Washington following up information Deputy Moses received about a possible "chop shop" at that location. Prior to their arrival at 17108 SR 20, Deputy Wilhonen called and spoke with the property owner, Douglas Rex. Rex indicated he rents the house on the property to William Everett however, the large barn with attached shed/work shop on the property is not part of Everett's lease and there should be no one in the barn with attached shed/work shop and there should be no vehicles in the barn.

Everett has also given consent to deputies to search the property located at 17108 SR 20, Burlington, Washington and indicated to Deputy Moses that Everett has previously called law enforcement with concerns of a chop shop on the property.

Upon arrival at 17108 SR 20, Deputy Moses noted a residence and barn on the property. The residence is a single story brown house with brown trim and a deck on the north side. The barn is a brown wood structure with an attached shed /workshop on the south side of the structure and is estimated to be about 40'x110' in size. A couple of vehicles stripped down to the frames were sitting on the east side of the barn. One of those vehicles was a maroon Acura Integra with no license plate. A check of the VIN number revealed the vehicle is a 1990 Acura Integra and was reported stolen to Burlington PD, on March 27, 2013.

Deputy Moses looked into the barn from the outside through holes in the walls and saw several vehicles in various stages of disassembly. Deputy Moses was able to see a Honda Accord bearing WA lic/AFM8003. A check of this license plate indicated this vehicle is a 1992 Honda Accord that was reported stolen to Mount Vernon PD September 3, 2013. Another vehicle Deputy Moses could see through the wall was a GMC Safari van bearing WA lic/770XJU. A

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check of this license plate indicated this is a 1994 GMC Safari van that was reported stolen to Bellingham PD on November 10, 2013. There was at least one other vehicle visible in the barn, a Honda Accord, with no license plates.

Deputy Wilhonen contacted the property owner, Douglas Rex, who gave a written consent to search the barn. Deputies Moses and Wilhonen entered the barn. They confirmed several vehicles in various stages of disassembly. A check of a black 1990 Honda Accord bearing WA lic/287WFO had been reported stolen to Mount Vernon PD on March 19, 2013.

Deputy Moses saw an electrical cord running from the inside of the barn to a trailer with a blue tarp over the roof parked outside of the barn. The trailer is a white Holiday Rambler, has red, white, and blue stripes on it, and bears WA license/ZD2450. WA DOL does not show a record for that license plate.

The renter of the house, William Everett, told deputies that he has seen Jesse Mejia coming and going from the property but does not believe Mejia is living on the property. Deputy Moses is familiar with Jesse Oscar Mejia dob/11-29-1977 being contacted by law enforcement on November 5, 2013, and providing his residence address as 17108 SR 20, Burlington, Washington.

According to Skagit County law enforcement records there have been approximately 54 vehicles reported stolen since March 19, 2013.

Jesse Mejia's criminal history includes: 6 felony convictions including: Robbery, Possession Stolen Property, Taking Motor Vehicle, VUCSA, and 14 misdemeanor convictions to include: assault, theft, driving offenses.

With the above information, I request a search warrant be issued for the property of 17108 SR 20, Burlington, Skagit County, Washington, described as a large property with a single story brown house, brown wood barn approximately 40'x100' in size with an attached shed/work shop, to include: the property and curtilage of 17108 SR 20, Burlington; the approximate 40'x100' barn with attached shed/work shop; a white Holiday Rambler, with red, white, and blue stripes on it bearing WA license/ZD2450; to search for and seize: stolen vehicles, stolen vehicle parts and accessories; documents of dominion and control.

I certify under penalty of perjury and the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge (RCW 9A.72.085).

Signature: K Walker U36 in Skagit County, Washington

Date: November 13, 2013
SKAGIT COUNTY

Probable cause established for issuance of ( ) arrest (✓) search warrant based on affidavit of Det K. Walker SCSO
Date 11/13 2013 Time 9:29 A.M.
Judge / Commissioner

SCSO 13-16249

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SKAGIT COUNTY DISTRICT COURT – COUNTY OF SKAGIT
STATE OF WASHINGTON

Honorable Linford C. Smith, ~~Judge~~/Commissioner

STATE OF WASHINGTON, PLAINTIFF	}	CAUSE NO. SW13-455
VS	}	SEARCH WARRANT FOR
Mejia, Jesse	}	Possession Stolen Property 2nd degree, RCW 9A.56.160 Taking Motor Vehicle Without Permission, RCW 9A.56.070
DEFENDANT	}	

TO ANY PEACE OFFICER OF THE STATE OF WASHINGTON:
WHEREAS, Detective Kay Walker, has this day signed an affidavit on oath before the undersigned ~~Judge~~/Commissioner Linford Smith, Skagit County District Court, that she believes that a crime has been committed:

To Wit: Possession Stolen Property 2nd degree, RCW 9A.56.160
Taking Motor Vehicle Without Permission, RCW 9A.56.070

or that stolen property is being held at:
17108 SR 20, Burlington, Skagit County, Washington

and the evidence of said crime is located: 17108 SR 20, Burlington, Skagit County, Washington

at the premises described as:
a large property with a single story brown house, brown wood barn approximately 40'x100' in size with an attached shed/work shop, to include: the property and curtilage of 17108 SR 20, Burlington; the approximate 40'x100' barn with attached shed/work shop; a white Holiday Rambler, with red, white, and blue stripes on it bearing WA license/ZD2450

WHEREAS, the undersigned finds that there is probable cause to believe that said facts contained in the affidavit to be true: THEREFORE, in the name of the State of Washington, you are commanded within 1 days to:

Enter the said aforementioned: PREMISES ☒, VEHICLE ☒, PERSON ☐, OTHER ☒
With the necessary and proper assistance, Search for and seize the following described:

EVIDENCE ☒ PROPERTY ☒ or CONTROLLED SUBSTANCE ☐

Stolen vehicles, stolen vehicle parts and accessories; documents of dominion and control.

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AND MAKE A RETURN OF SAID WARRANT PROMPTLY, NO LATER THAN 5 DAYS FROM THE EXECUTION OF THE SEARCH WARRANT TO THE UNDERSIGNED JUDGE, SHOWING ALL ACTS AND THINGS DONE THEREUNDER, WITH A WRITTEN INVENTORY OF ANY PROPERTIES TAKEN AND THE NAME OF THE PERSON OR PERSONS IN WHOSE POSSESSION THE SAME WERE FOUND, IF ANY, AND IF NO PERSON BE FOUND IN THE POSSESSION OF SAID ARTICLES, THE INVENTORY SHALL SO STATE.

THE PEACE OFFICER TAKING PERSONAL PROPERTY UNDER THE WARRANT SHALL GIVE TO THE PERSON FROM WHOM OR FROM WHOSE PREMISES THE PROPERTY IS TAKEN, A COPY OF WARRANT AND A RECEIPT FOR THE PROPERTY TAKEN. IF NO SUCH PERSON IS PRESENT, THE OFFICER MAY POST A COPY OF THE SEARCH WARRANT AND RECEIPT.

THE INVENTORY SHALL BE MADE IN THE PRESENCE OF THE PERSON FROM WHOSE POSSESSION OR PREMISES THE PROPERTY IS TAKEN, OR IN THE PRESECE OF AT LEAST ONE PERSON OTHER THAN THE SEIZING OFFICER.

DATE: NOV/13/2013

~~Judge~~/Commissioner, SKAGIT COUNTY DISTRICT COURT

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. JESSE MEJIA, Appellant.	)	NO. 72727-3-I

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF AUGUST, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	ERIK PEDERSEN, DPA SKAGIT COUNTY PROSECUTOR'S OFFICE COURTHOUSE ANNEX 605 S THIRD ST. MOUNT VERNON, WA 98273	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X]	JESSE MEJIA 810603 AIRWAY HEIGHTS CORRECTIONS CENTER PO BOX 2049 AIRWAY HEIGHTS, WA 99001	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF AUGUST, 2015.

X_____

Washington Appellate Project
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